IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 26410 of 2007(R)

OS.52/2004 of SUB COURT, VADAKARA

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PETITIONER:

MRS.VIMALA BALAN, W/O.BALAN, AGED 67 YEARS, RESIDING AT "ARJUNA", PUDUPPANAM AMSOM AND DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:

1. M/S.ASHOK TALKIES, A REGISTERED PARTNERSHIP FIRM, REP. BY ITS MANAGING PARTNER SRI.JAYADASAN, THE 2ND RESPONDENT.

2. T.JAYADEVAN, S/O.T.NARAYANAN, RESIDING AT "AMULYA", PUDUPPANAM AMSOM DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT.

3. T.CHANDRAN, S/O.T.NARAYANAN, RESIDING AT THAYYULLATHIL HOUSE, PUDUPPANAM AMSOM AND DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT.

4. T.SURENDRAN, S/O.T.NARAYANAN, RESIDING AT THAYYULLATHIL HOUSE, PUDUPPANAM AMSOM AND DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT.

5. DR.T.BHARATHAN, S/O.T.NARAYANAN, RESIDING AT NO.4, KINGSLY DRIVE, ENGLISH TOWN, NEW JERSEY, U.S.A.07726.

6. T.H.RAJAN, S/O.NARAYANAN,
RESIDING AT NO.18, STATE BANK COLONY,
CHEVAYUR AMSOM AND DESOM, KOZHIKODE
TALUK, KOZHIKODE DISTRICT.

7. VRIJI MOHAN, S/O.T.BALAN, RESIDING AT
"ARJUNA", PUDUPPANAM AMSOM AND DESOM,
VATAKARA TALUK, NOW RESIDING AT P.V.APARTMENTS,
7TH FLOOR, YMCA ROAD, KOZHIKODE.

8. BUELA RAJEEVAN, D/O.T.BALAN,
RESIDING AT ARJUNA, PUDUPPANAM
AMSOM AND DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.

9. ARJUN, S/O.T.BALAN,
RESIDING AT ARJUNA, DO. DO. DO.

10. A.P.KUNHIKANNAN,
RESIDING AT VADAKKAN THURUTHIYIL HOUSE,
PALAYADNADA AMSOM AND DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.

11. A.P.RATNAKARAN, S/O.KUNHIKANNAN,
RESIDING AT CHAKKAROTHUKULAM, EDACHERRY AMSOM
AND DESOM, KOZHIKODE TALUK, KOZHIKODE DISTRICT.
REP.BY HIS POWER OF ATTORNEY HOLDER
MRS.SANDYA RATNAKARAN, R/AT 1/187, KALLINGAL HOUSE
CHAKKROTHUKULAM, KACHERY AMSOM & DESOM, KOZHIKODE

12. A.P.PREMARAJAN, S/O.KUNHIKANNAN,
RESIDING AT VADAKKAN THURUTHIL HOUSE,
PALAYNADA AMSOM AND DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.

13. A.P.VALSAN, S/O.KUNHIKANNAN,
RESIDING AT VADAKKAN THURUTHIL HOUSE,
PALAYNADA AMSOM AND DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.

14. A.P.VANAJA, W/O.JAYARAJ, RESIDING AT
TETTATH HOUSE, AADIYOOR, ERAMALA, ORKETTERI
AMSOM AND DESOM, VATAKARA TALUK, KOZHIKODE
DISTRICT.

15. MRS.JALAJA DEVADAS, W/O.DEVADAS,
RESIDING AT "AISHWARYA", A.P.C.ROAD,
MALAPARAMBA, VINGERY, KOZHIKODE DISTRICT.

16. MR.SUDHA CHANDRAN, W/O.CHANDRAN,
RESIDING AT THAYYULLATHIL HOUSE,
PUDUPPANAM AMSOM AND DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.

17. ANITHA SURENDRAN, W/O.SURENDRAN,
RESIDING AT THAYYULLATHIL HOUSE,
PUDUPPANAM AMSOM AND DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.

18. GEETHA RAJAN, W/O.T.RAJAN,
RESIDING AT CHEVAYUR, CHEVAYUR
AMSOM AND DESOM, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.

19. SMT.DHANALAKSHMI, W/O.BHARATHAN,
RESIDING AT NO.4, KINGSLY DRIVE,
ENGLISH TOWN, NEW JERSEY, U.S.A.77726.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.) FOR R1 & R2
SRI.ANTONY C. ETTUKETTIL
SRI.S.SUJIN
SMT.K.AMMINIKUTTY FOR R3 & R4.R16 & R17
SRI.BIJU ABRAHAM FOR R7,R9,R12 & R13
SRI.B.G.BHASKAR
SMT.PREETHY KARUNAKARAN FOR R6,R8,R10,R15 & R18
SMT.M.M.DEEPA
SRI.JAYKAR.K.S.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the plaint in OS 91/04 (without schedules) on the file of the Sub Court, Vatakara.

Ext.P2 true copy of the order dated 22.8.2006 in IA 566/05 in OS 91/04 on the file of the Sub Court, Vatakara.

Ext.P3 true copy of the petition IA 925/07 in OS 52/04 along with the affidavit filed in support thereon, on the file of the Sub Court, Vatakara filed by respondents 1 to 4 herein.

Ext.P4 true copy of the counter filed by other respondents in Ext.P3 application IA 925/07

Ext.P5 true copy of the order dated 20.8.2007 in IA 925/07 in OS 52/04 passed by the Sub Court, Vatakara.

M.N.Krishnan, J.

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W.P(C).No.26410 of 2007

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Dated this the 4th day of December, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Subordinate Judge, Vatakara in I.A.No.925 of 2007 in O.S.No.52 of 2004. Third respondent in the I.A. is the writ petitioner before this Court. Her specific contention is that neither she nor her counsel was given any notice before disposing of the application and therefore there is violation of the principles of natural justice. It is submitted by the counsel that the name of the counsel, namely, Mr.Rajiv Vachal got appointment as a Public Prosecutor and a fresh vakalath was filed but no notice was given to the counsel who filed fresh vakalath and that resulted in the non-service of notice and also disposed of the matter without hearing her. Question involved is whether the witnesses to be examined are to be examined by the Commissioner or whether they have to be examined before the court for particular reasons

which the court has to consider after hearing both sides.

2. Therefore, the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration of I.A.No.925 of 2007 in O.S.No.52 of 2004 after giving notice to all concerned and after hearing all the parties. Since the matter has reached the trial stage, I direct the court below to dispose of the petition at least on the first week after the reopening of the court after X'mas holidays.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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